

HB6290



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6290

Introduced 2/11/2016, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-710

Amends the Juvenile Court Act of 1987. Provides that in no event shall a minor guilty of an offense under the Illinois Controlled Substances Act be committed to the Department of Juvenile Justice.

LRB099 19504 SLF 43897 b

A BILL FOR

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Section 5-710 as follows:

6 (705 ILCS 405/5-710)

7 Sec. 5-710. Kinds of sentencing orders.

8 (1) The following kinds of sentencing orders may be made in
9 respect of wards of the court:

10 (a) Except as provided in Sections 5-805, 5-810, 5-815,
11 a minor who is found guilty under Section 5-620 may be:

12 (i) put on probation or conditional discharge and
13 released to his or her parents, guardian or legal
14 custodian, provided, however, that any such minor who
15 is not committed to the Department of Juvenile Justice
16 under this subsection and who is found to be a
17 delinquent for an offense which is first degree murder,
18 a Class X felony, or a forcible felony shall be placed
19 on probation;

20 (ii) placed in accordance with Section 5-740, with
21 or without also being put on probation or conditional
22 discharge;

23 (iii) required to undergo a substance abuse

1 assessment conducted by a licensed provider and
2 participate in the indicated clinical level of care;

3 (iv) on and after the effective date of this
4 amendatory Act of the 98th General Assembly and before
5 January 1, 2017, placed in the guardianship of the
6 Department of Children and Family Services, but only if
7 the delinquent minor is under 16 years of age or,
8 pursuant to Article II of this Act, a minor for whom an
9 independent basis of abuse, neglect, or dependency
10 exists. On and after January 1, 2017, placed in the
11 guardianship of the Department of Children and Family
12 Services, but only if the delinquent minor is under 15
13 years of age or, pursuant to Article II of this Act, a
14 minor for whom an independent basis of abuse, neglect,
15 or dependency exists. An independent basis exists when
16 the allegations or adjudication of abuse, neglect, or
17 dependency do not arise from the same facts, incident,
18 or circumstances which give rise to a charge or
19 adjudication of delinquency;

20 (v) placed in detention for a period not to exceed
21 30 days, either as the exclusive order of disposition
22 or, where appropriate, in conjunction with any other
23 order of disposition issued under this paragraph,
24 provided that any such detention shall be in a juvenile
25 detention home and the minor so detained shall be 10
26 years of age or older. However, the 30-day limitation

1 may be extended by further order of the court for a
2 minor under age 15 committed to the Department of
3 Children and Family Services if the court finds that
4 the minor is a danger to himself or others. The minor
5 shall be given credit on the sentencing order of
6 detention for time spent in detention under Sections
7 5-501, 5-601, 5-710, or 5-720 of this Article as a
8 result of the offense for which the sentencing order
9 was imposed. The court may grant credit on a sentencing
10 order of detention entered under a violation of
11 probation or violation of conditional discharge under
12 Section 5-720 of this Article for time spent in
13 detention before the filing of the petition alleging
14 the violation. A minor shall not be deprived of credit
15 for time spent in detention before the filing of a
16 violation of probation or conditional discharge
17 alleging the same or related act or acts. The
18 limitation that the minor shall only be placed in a
19 juvenile detention home does not apply as follows:

20 Persons 18 years of age and older who have a
21 petition of delinquency filed against them may be
22 confined in an adult detention facility. In making a
23 determination whether to confine a person 18 years of
24 age or older who has a petition of delinquency filed
25 against the person, these factors, among other
26 matters, shall be considered:

- 1 (A) the age of the person;
- 2 (B) any previous delinquent or criminal
3 history of the person;
- 4 (C) any previous abuse or neglect history of
5 the person;
- 6 (D) any mental health history of the person;
7 and
- 8 (E) any educational history of the person;
- 9 (vi) ordered partially or completely emancipated
10 in accordance with the provisions of the Emancipation
11 of Minors Act;
- 12 (vii) subject to having his or her driver's license
13 or driving privileges suspended for such time as
14 determined by the court but only until he or she
15 attains 18 years of age;
- 16 (viii) put on probation or conditional discharge
17 and placed in detention under Section 3-6039 of the
18 Counties Code for a period not to exceed the period of
19 incarceration permitted by law for adults found guilty
20 of the same offense or offenses for which the minor was
21 adjudicated delinquent, and in any event no longer than
22 upon attainment of age 21; this subdivision (viii)
23 notwithstanding any contrary provision of the law;
- 24 (ix) ordered to undergo a medical or other
25 procedure to have a tattoo symbolizing allegiance to a
26 street gang removed from his or her body; or

1 (x) placed in electronic home detention under Part
2 7A of this Article.

3 (b) A minor found to be guilty may be committed to the
4 Department of Juvenile Justice under Section 5-750 if the
5 minor is at least 13 years and under 20 years of age,
6 provided that the commitment to the Department of Juvenile
7 Justice shall be made only if a term of imprisonment in the
8 penitentiary system of the Department of Corrections is
9 permitted by law for adults found guilty of the offense for
10 which the minor was adjudicated delinquent. The court shall
11 include in the sentencing order any pre-custody credits the
12 minor is entitled to under Section 5-4.5-100 of the Unified
13 Code of Corrections. The time during which a minor is in
14 custody before being released upon the request of a parent,
15 guardian or legal custodian shall also be considered as
16 time spent in custody.

17 (c) When a minor is found to be guilty for an offense
18 which is a violation of the Illinois Controlled Substances
19 Act, the Cannabis Control Act, or the Methamphetamine
20 Control and Community Protection Act and made a ward of the
21 court, the court may enter a disposition order requiring
22 the minor to undergo assessment, counseling or treatment in
23 a substance abuse program approved by the Department of
24 Human Services.

25 (2) Any sentencing order other than commitment to the
26 Department of Juvenile Justice may provide for protective

1 supervision under Section 5-725 and may include an order of
2 protection under Section 5-730.

3 (3) Unless the sentencing order expressly so provides, it
4 does not operate to close proceedings on the pending petition,
5 but is subject to modification until final closing and
6 discharge of the proceedings under Section 5-750.

7 (4) In addition to any other sentence, the court may order
8 any minor found to be delinquent to make restitution, in
9 monetary or non-monetary form, under the terms and conditions
10 of Section 5-5-6 of the Unified Code of Corrections, except
11 that the "presentencing hearing" referred to in that Section
12 shall be the sentencing hearing for purposes of this Section.
13 The parent, guardian or legal custodian of the minor may be
14 ordered by the court to pay some or all of the restitution on
15 the minor's behalf, pursuant to the Parental Responsibility
16 Law. The State's Attorney is authorized to act on behalf of any
17 victim in seeking restitution in proceedings under this
18 Section, up to the maximum amount allowed in Section 5 of the
19 Parental Responsibility Law.

20 (5) Any sentencing order where the minor is committed or
21 placed in accordance with Section 5-740 shall provide for the
22 parents or guardian of the estate of the minor to pay to the
23 legal custodian or guardian of the person of the minor such
24 sums as are determined by the custodian or guardian of the
25 person of the minor as necessary for the minor's needs. The
26 payments may not exceed the maximum amounts provided for by

1 Section 9.1 of the Children and Family Services Act.

2 (6) Whenever the sentencing order requires the minor to
3 attend school or participate in a program of training, the
4 truant officer or designated school official shall regularly
5 report to the court if the minor is a chronic or habitual
6 truant under Section 26-2a of the School Code. Notwithstanding
7 any other provision of this Act, in instances in which
8 educational services are to be provided to a minor in a
9 residential facility where the minor has been placed by the
10 court, costs incurred in the provision of those educational
11 services must be allocated based on the requirements of the
12 School Code.

13 (7) In no event shall a guilty minor be committed to the
14 Department of Juvenile Justice for a period of time in excess
15 of that period for which an adult could be committed for the
16 same act. The court shall include in the sentencing order a
17 limitation on the period of confinement not to exceed the
18 maximum period of imprisonment the court could impose under
19 Article V of the Unified Code of Corrections.

20 (7.5) In no event shall a guilty minor be committed to the
21 Department of Juvenile Justice or placed in detention when the
22 act for which the minor was adjudicated delinquent would not be
23 illegal if committed by an adult.

24 (7.75) In no event shall a guilty minor be committed to the
25 Department of Juvenile Justice for an offense that is a
26 violation of the Illinois Controlled Substances Act.

1 (8) A minor found to be guilty for reasons that include a
2 violation of Section 21-1.3 of the Criminal Code of 1961 or the
3 Criminal Code of 2012 shall be ordered to perform community
4 service for not less than 30 and not more than 120 hours, if
5 community service is available in the jurisdiction. The
6 community service shall include, but need not be limited to,
7 the cleanup and repair of the damage that was caused by the
8 violation or similar damage to property located in the
9 municipality or county in which the violation occurred. The
10 order may be in addition to any other order authorized by this
11 Section.

12 (8.5) A minor found to be guilty for reasons that include a
13 violation of Section 3.02 or Section 3.03 of the Humane Care
14 for Animals Act or paragraph (d) of subsection (1) of Section
15 21-1 of the Criminal Code of 1961 or paragraph (4) of
16 subsection (a) of Section 21-1 of the Criminal Code of 2012
17 shall be ordered to undergo medical or psychiatric treatment
18 rendered by a psychiatrist or psychological treatment rendered
19 by a clinical psychologist. The order may be in addition to any
20 other order authorized by this Section.

21 (9) In addition to any other sentencing order, the court
22 shall order any minor found to be guilty for an act which would
23 constitute, predatory criminal sexual assault of a child,
24 aggravated criminal sexual assault, criminal sexual assault,
25 aggravated criminal sexual abuse, or criminal sexual abuse if
26 committed by an adult to undergo medical testing to determine

1 whether the defendant has any sexually transmissible disease
2 including a test for infection with human immunodeficiency
3 virus (HIV) or any other identified causative agency of
4 acquired immunodeficiency syndrome (AIDS). Any medical test
5 shall be performed only by appropriately licensed medical
6 practitioners and may include an analysis of any bodily fluids
7 as well as an examination of the minor's person. Except as
8 otherwise provided by law, the results of the test shall be
9 kept strictly confidential by all medical personnel involved in
10 the testing and must be personally delivered in a sealed
11 envelope to the judge of the court in which the sentencing
12 order was entered for the judge's inspection in camera. Acting
13 in accordance with the best interests of the victim and the
14 public, the judge shall have the discretion to determine to
15 whom the results of the testing may be revealed. The court
16 shall notify the minor of the results of the test for infection
17 with the human immunodeficiency virus (HIV). The court shall
18 also notify the victim if requested by the victim, and if the
19 victim is under the age of 15 and if requested by the victim's
20 parents or legal guardian, the court shall notify the victim's
21 parents or the legal guardian, of the results of the test for
22 infection with the human immunodeficiency virus (HIV). The
23 court shall provide information on the availability of HIV
24 testing and counseling at the Department of Public Health
25 facilities to all parties to whom the results of the testing
26 are revealed. The court shall order that the cost of any test

1 shall be paid by the county and may be taxed as costs against
2 the minor.

3 (10) When a court finds a minor to be guilty the court
4 shall, before entering a sentencing order under this Section,
5 make a finding whether the offense committed either: (a) was
6 related to or in furtherance of the criminal activities of an
7 organized gang or was motivated by the minor's membership in or
8 allegiance to an organized gang, or (b) involved a violation of
9 subsection (a) of Section 12-7.1 of the Criminal Code of 1961
10 or the Criminal Code of 2012, a violation of any Section of
11 Article 24 of the Criminal Code of 1961 or the Criminal Code of
12 2012, or a violation of any statute that involved the wrongful
13 use of a firearm. If the court determines the question in the
14 affirmative, and the court does not commit the minor to the
15 Department of Juvenile Justice, the court shall order the minor
16 to perform community service for not less than 30 hours nor
17 more than 120 hours, provided that community service is
18 available in the jurisdiction and is funded and approved by the
19 county board of the county where the offense was committed. The
20 community service shall include, but need not be limited to,
21 the cleanup and repair of any damage caused by a violation of
22 Section 21-1.3 of the Criminal Code of 1961 or the Criminal
23 Code of 2012 and similar damage to property located in the
24 municipality or county in which the violation occurred. When
25 possible and reasonable, the community service shall be
26 performed in the minor's neighborhood. This order shall be in

1 addition to any other order authorized by this Section except
2 for an order to place the minor in the custody of the
3 Department of Juvenile Justice. For the purposes of this
4 Section, "organized gang" has the meaning ascribed to it in
5 Section 10 of the Illinois Streetgang Terrorism Omnibus
6 Prevention Act.

7 (11) If the court determines that the offense was committed
8 in furtherance of the criminal activities of an organized gang,
9 as provided in subsection (10), and that the offense involved
10 the operation or use of a motor vehicle or the use of a
11 driver's license or permit, the court shall notify the
12 Secretary of State of that determination and of the period for
13 which the minor shall be denied driving privileges. If, at the
14 time of the determination, the minor does not hold a driver's
15 license or permit, the court shall provide that the minor shall
16 not be issued a driver's license or permit until his or her
17 18th birthday. If the minor holds a driver's license or permit
18 at the time of the determination, the court shall provide that
19 the minor's driver's license or permit shall be revoked until
20 his or her 21st birthday, or until a later date or occurrence
21 determined by the court. If the minor holds a driver's license
22 at the time of the determination, the court may direct the
23 Secretary of State to issue the minor a judicial driving
24 permit, also known as a JDP. The JDP shall be subject to the
25 same terms as a JDP issued under Section 6-206.1 of the
26 Illinois Vehicle Code, except that the court may direct that

1 the JDP be effective immediately.

2 (12) If a minor is found to be guilty of a violation of
3 subsection (a-7) of Section 1 of the Prevention of Tobacco Use
4 by Minors Act, the court may, in its discretion, and upon
5 recommendation by the State's Attorney, order that minor and
6 his or her parents or legal guardian to attend a smoker's
7 education or youth diversion program as defined in that Act if
8 that program is available in the jurisdiction where the
9 offender resides. Attendance at a smoker's education or youth
10 diversion program shall be time-credited against any community
11 service time imposed for any first violation of subsection
12 (a-7) of Section 1 of that Act. In addition to any other
13 penalty that the court may impose for a violation of subsection
14 (a-7) of Section 1 of that Act, the court, upon request by the
15 State's Attorney, may in its discretion require the offender to
16 remit a fee for his or her attendance at a smoker's education
17 or youth diversion program.

18 For purposes of this Section, "smoker's education program"
19 or "youth diversion program" includes, but is not limited to, a
20 seminar designed to educate a person on the physical and
21 psychological effects of smoking tobacco products and the
22 health consequences of smoking tobacco products that can be
23 conducted with a locality's youth diversion program.

24 In addition to any other penalty that the court may impose
25 under this subsection (12):

26 (a) If a minor violates subsection (a-7) of Section 1

1 of the Prevention of Tobacco Use by Minors Act, the court
2 may impose a sentence of 15 hours of community service or a
3 fine of \$25 for a first violation.

4 (b) A second violation by a minor of subsection (a-7)
5 of Section 1 of that Act that occurs within 12 months after
6 the first violation is punishable by a fine of \$50 and 25
7 hours of community service.

8 (c) A third or subsequent violation by a minor of
9 subsection (a-7) of Section 1 of that Act that occurs
10 within 12 months after the first violation is punishable by
11 a \$100 fine and 30 hours of community service.

12 (d) Any second or subsequent violation not within the
13 12-month time period after the first violation is
14 punishable as provided for a first violation.

15 (Source: P.A. 98-536, eff. 8-23-13; 98-803, eff. 1-1-15;
16 99-268, eff. 1-1-16.)